IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.161 OF 2007

IN

SUMMARY SUIT NO.572 OF 2006

Anish Metals Pvt. Ltd. .. Plaintiffs.
Versus
MSTC Limited & Anr. .. Defendants.

Mr.C.A.D'Souza for plaintiff.
Mr.M.P.Rege for defendant No.1.
Mr.A.S.Rao for defendant No.2.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 13th August, 2007.

P.C.:

1. The suit is filed for recovery of a sum of Rs.23,83,990/- as per the particulars of the claim Exhibit-H.

2. The claim in the suit is on the basis that the defendants did not supply to the plaintiffs remaining quantity under the Sale Order dated 2nd March, 2004 nor have they refunded the balance amount of difference towards quantity of any supplied goods.

3. Affidavit-in-reply has been filed on behalf of the defendants raising several issues. The principal contention is that the suit is not maintainable as a

summary suit. It is contended that there is an arbitration clause. Secondly, assuming that a suit is maintainable, the terms of contract are very clear. It is contended that as per the terms and conditions, which were binding on the plaintiffs, they were obliged to make payment and lift the quantity to the extent of payment. There is a delay of two months and ten days so also one month and ten days in making payments under the Contract under requisite instalment. In such circumstances, there was delay on the part of the plaintiffs in lifting the materials. There is elaborate correspondence on this issue and breach is alleged of the obligations, which are of the plaintiffs as well.

4. Considering the pleas raised in the affidavit-in-reply by the defendants and also perusing the plaint and the annexures thereto, to my mind, several triable issues arise for consideration including with regard to the obligations under the Agreement/Contract in question. Unconditional leave to defend the suit is granted. Suit is transferred to the list of commercial causes. Written statement to be filed within a period of eight weeks from today. Discovery and inspection within a period of six weeks thereafter.

(S.C.Dharmadhikari, J.)